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38516 7590 05/02/2008 SCOTT P. ZIMMERMAN, PLLC PO BOX 3822 CARY, NC 27519				
EXAMINER				
SHELEHEDA, JAMES R				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/884,131

Applicant(s)

STALLWORTH, F. DAVID

Examiner

JAMES SHELEHEDA

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/88)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to "supplementing the locally produced content with additional content related to the specific geographic terrain" have been considered but are moot in view of the new ground(s) of rejection.
2. Applicant's arguments with respect to "the local producer located on and operating inside a specific geographic terrain" have been fully considered but they are not persuasive.

In response, to applicant's arguments, it is noted that neither Schiller or Corts was specifically relied upon to disclose producing content related to a specific geographic terrain.

Schiller, however, clearly discloses wherein a producer will produce a program for distribution. This program is clearly produced within some specific geographic terrain, as the content producer must be located within some specific terrain.

The production and distribution of content related to a specific type of local geographic terrain was indicated as being well known in the art, as it merely involves putting related programming on a single channel, by collecting and compiling, that which may previously exist on several channels. The collection of specialized kinds of programming on a single channel is the basis of numerous programming channel formats such as Nickelodeon, CNN, the Science-Fiction Channel, the Family Channel,

the Movie Channel, etc. Furthermore, the particular aggregation of programs based upon geographic terrain having a distinguishable feature is known in the art (ex. The Water Channel, The Sailing Channel). The selection of geographic terrain is merely another grouping of existing programming material, depending simply upon the desires of the broadcasters. Therefore, it would have been obvious to one of ordinary skill in the art to utilize local content which is related to a specific local type of geographic terrain, having a distinguishable feature.

For example, programming produced within Nevada which featured any desert terrain, or produced within Florida featuring coastal terrain would clearly meet this limitation.

Furthermore, the evidence of record "www.h2o.com" clearly gives examples of webcams which would be present to capture video at the specific location (see "crabcam" and "watercams"). Thus, local content concerning the specific geographic terrain is clearly produced at the terrain, as the content consists of a local video stream of the surrounding local area. Therefore, applicant's arguments are not convincing, as it was clearly known in the art at the time to locally produce content "on and inside the geographic terrain" related to the specific geographic terrain.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 9-13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiller et al. (Schiller) (5,499,046) (of record) in view of Corts et al. (Corts) (US 2002/0141491 A1) (of record) and Matheny et al. (Matheny) (6,766,524).

As to claim 1, Schiller discloses a system for delivering media content (see Figs. 1-3), comprising:

means for receiving locally produced content from a local producer (programs produced at some local location; column 1, lines 40-52), the local producer located on and operating inside a specific geographic terrain to produce media content (column 1, lines 40-52);

means for (scheduler/distribution station; column 4, line 62-column 5, line 9 and column 5, line 66-column 6, line 3) aggregating the content into a bundle of content, the bundle of content having a full schedule of programming (full day of programming for the channel; column 1, lines 53-59 and column 4, lines 18-45), the bundle of content having diverse subject matter (column 1, line 40-column 2, line 11).

While Schiller discloses means for distributing the bundle of content as a channel devoted to the specific content (such as HBO, etc...; see column 4, lines 18-34 and Fig. 2), nationally distributing the content to an audience within and outside of the specific type of geographic terrain (as the content is transmitting on nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig. 2) and the audience having an interest in the content (wherein the audience is choosing to view the received channel; column 11, lines 41-50), he fails to specifically disclose wherein the content is

related to the local geographic terrain having a distinguishable physical feature, means for providing free advertising space in exchange for the produced content and means for supplementing the produced content with additional content related to the specific geographic terrain.

It was well known in the art to put related programming on a single channel, by collecting and compiling, that which may previously exist on several channels. The collection of specialized kinds of programming on a single channel is the basis of numerous programming channel formats such as Nickelodeon, CNN, the Science-Fiction Channel, the Family Channel, the Movie Channel, etc. Furthermore, the particular aggregation of programs based upon geographic terrain having a distinguishable feature is known in the art (ex. The Water Channel, The Sailing Channel). The selection of local geographic terrain is merely another grouping of existing programming material, depending simply upon the desires of the broadcasters. Therefore, it would have been obvious to one of ordinary skill in the art to utilize locally produced content which is related to a specific type of geographic terrain, having a distinguishable feature.

Furthermore, nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. In re Ngai, **367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004) (combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product).< Cf. In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally

related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

For example, if the prior art suggests storing a song on a disk, merely choosing a particular song to store on the disk would be presumed to be well within the level of ordinary skill in the art at the time the invention was made. The difference between the prior art and the claimed invention is simply a rearrangement of nonfunctional descriptive material.

(see MPEP at 2106, Section VI).

Additionally, in an analogous art, Corts discloses a content distribution system (Fig. 2) wherein the content distributor will provide free advertising space in exchange for the produced content (paragraph 322, Fig. 30) for the typical benefit of allowing the content producers to directly barter for their desired needs and thereby reducing the financial outlay needed to assemble and produce the content channel.

Finally, in an analogous art, Matheny discloses a content distribution system (Fig. 2) wherein the distributed content is bundled with supplemental information related to the programming (column 2, lines 38-55 and column 6, lines 10-58) for the typical benefit of encouraging viewers to pay more attention during the broadcast program (column 1, line 65-column 2, line 18).

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include wherein the content is related to the local geographic terrain, having a distinguishable feature for the typical

benefit of allowing the broadcaster to select and bundle the content as desired by viewers.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include providing free advertising space in exchange for the produced content, as taught in combination with Corts, for the typical benefit of allowing the content producers to directly barter for their desired needs and thereby reducing the financial outlay needed to assemble and produce the content channel.

Finally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller and Corts' system to include means for supplementing the produced content with additional content related to the specific geographic terrain, as taught in combination with Matheny, for the typical benefit of encouraging viewers to pay more attention during the broadcast program.

As to claim 2, Schiller, Corts and Matheny disclose means for transmitting the channel within and outside the specific type of geographic terrain (as the content is transmitting on nationally available channels, such as HBO, etc....; see Schiller at column 4, lines 18-34 and Fig. 2) by transmitting the bundle of content to a media provider (see Schiller at column 6, lines 46-64).

As to claim 3, Schiller, Corts and Matheny disclose wherein the media provider is a cable television operator (see Schiller at column 3, lines 56-63).

As to claim 4, Schiller, Corts and Matheny disclose means for distributing the bundle of content to a national audience (nationally available channels, such as HBO, etc...; see Schiller at column 4, lines 18-34 and Fig. 2).

As to claim 5, Schiller, Corts and Matheny disclose wherein the means for distributing the bundle of content comprises a cable network (see Schiller at column 4, lines 5-18).

As to claim 6, see the rejection of claim 1 above.

As to claim 9, Schiller, Corts and Matheny disclose wherein the content is audio content and video content that is nationally distributed (see Schiller at column 3, lines 56-59) via a cable network (see Schiller at column 4, lines 5-18).

As to claim 10, Schiller, Corts and Matheny disclose wherein the content is audio content, video content (see Schiller at column 3, lines 56-59) and data content (schedule data; see Schiller at column 4, line 62-column 5, line 8) that is nationally distributed via a computer network content provider (see Schiller at Figs. 1-3 and column 4, lines 5-18).

As to claim 11, Schiller discloses a method for delivering media content (see Figs. 1-3), comprising:

receiving locally produced content from a local producer (programs produced at some local location; column 1, lines 40-52), the local producer located on and operating inside a specific geographic terrain to produce media content (column 1, lines 40-52);

aggregating the content into a bundle of content, the bundle of content having a full schedule of programming (full day of programming for the channel; column 1, lines 53-59 and column 4, lines 18-45), the bundle of content having diverse subject matter (column 1, line 40-column 2, line 11).

While Schiller discloses means for distributing the bundle of content as a channel devoted to the specific content (such as HBO, etc...; see column 4, lines 18-34 and Fig. 2), nationally distributing the content to an audience within and outside of the specific type of geographic terrain (as the content is transmitting on nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig. 2) and the audience having an interest in the content (wherein the audience is choosing to view the received channel; column 11, lines 41-50), he fails to specifically disclose wherein the content is related to the local geographic terrain having a distinguishable physical feature, providing the locally produced content at no charge for free, providing free advertising space in exchange for the produced content and means for supplementing the produced content with additional content related to the specific geographic terrain.

It was well known in the art to put related programming on a single channel, by collecting and compiling, that which may previously exist on several channels. The

collection of specialized kinds of programming on a single channel is the basis of numerous programming channel formats such as Nickelodeon, CNN, the Science-Fiction Channel, the Family Channel, the Movie Channel, etc. Furthermore, the particular aggregation of programs based upon geographic terrain having a distinguishable feature is known in the art (ex. The Water Channel, The Sailing Channel). The selection of geographic terrain is merely another grouping of existing programming material, depending simply upon the desires of the broadcasters. Therefore, it would have been obvious to one of ordinary skill in the art to utilize content which is related to a specific type of geographic terrain, having a distinguishable feature.

Furthermore, nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. In *re* Ngai, **367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004)** (combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product).[<] Cf. In *re* Gulack, **703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983)** (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

For example, if the prior art suggests storing a song on a disk, merely choosing a particular song to store on the disk would be presumed to be well within the level of ordinary skill in the art at the time the invention was made. The difference between the prior art and the claimed invention is simply a rearrangement of nonfunctional descriptive material.

(see MPEP at 2106, Section VI).

Additionally, in an analogous art, Corts discloses a content distribution system (Fig. 2) wherein produced content is provided at no charge for free (paragraph 322) and the content distributor will provide free advertising space in exchange for the produced content (paragraph 322, Fig. 30) for the typical benefit of allowing the content producers to directly barter for their desired needs and thereby reducing the financial outlay needed to assemble and produce the content channel.

Finally, in an analogous art, Matheny discloses a content distribution system (Fig. 2) wherein the distributed content is bundled with supplemental information related to the programming (column 2, lines 38-55 and column 6, lines 10-58) for the typical benefit of encouraging viewers to pay more attention during the broadcast program (column 1, line 65-column 2, line 18).

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include wherein the content is related to the local geographic terrain, having a distinguishable feature for the typical benefit of allowing the broadcaster to select and bundle the content as desired by viewers.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include providing the locally produced content at no charge for free and providing free advertising space in exchange for the produced content, as taught in combination with Corts, for the typical benefit of allowing the content producers to directly barter for their desired needs and

thereby reducing the financial outlay needed to assemble and produce the content channel.

Finally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller and Corts' system to include means for supplementing the produced content with additional content related to the specific geographic terrain, as taught in combination with Matheny, for the typical benefit of encouraging viewers to pay more attention during the broadcast program.

As to claim 12, Schiller, Corts and Matheny disclose wherein the content is at least one of audio content and video content (see Schiller at column 3, lines 56-64).

As to claims 13 and 18, see the rejection of claim 11 above.

As to claim 15, Schiller, Corts and Matheny disclose broadcasting audio content and video content (see Schiller at column 3, lines 56-59) using a cable network (see Schiller at column 4, lines 5-18).

As to claim 16, Schiller, Corts and Matheny disclose delivering audio and video content (see Schiller at column 3, lines 56-59) from a cable network (see Schiller at column 4, lines 5-18) to a cable television operator (see Schiller at column 4, line 62-column 5, line 18), and wherein the cable television operator broadcasts the audio content and the video content (see Schiller at column 5, lines 25-31).

As to claim 17, Schiller, Corts and Matheny disclose transmitting audio content, video content (see Schiller at column 3, lines 56-59) and data content (schedule data; see Schiller at column 4, line 62-column 5, line 8) using a computer network content provider (see Schiller at Figs. 1-3 and column 4, lines 5-18).

5. Claims 8 and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Schiller and Corts as applied to claims 1 and 11 above, and further in view of Decinque (6,286,139) (of record).

As to claims 8 and 14, while Schiller and Corts disclose wherein the content comprises audio content that is nationally distributed (column 3, lines 56-63) and wherein the channel producer utilizes the Internet (column 4, lines 46-61), they fail to specifically disclose a website.

In an analogous art, Decinque discloses a distribution system (Fig. 1) wherein content is accessed and distributed via a website (column 4, lines 18-46) for the typical benefit of providing a simple web-based method of ordering and distributing content (column 1, lines 4-54).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller and Corts' system to include a website, as taught by Decinque, for the typical benefit of providing a simple web-based method of ordering and distributing content.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES SHELEHEDA whose telephone number is (571)272-7357. The examiner can normally be reached on Monday - Friday, 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda
Examiner, Art Unit 2623

JS

/Chris Kelley/
Supervisory Patent Examiner, Art Unit 2623